

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

AT&T SERVICES, INC. and DIRECTV, LLC,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 3:16-cv-01106
v.	§	
	§	
JOHN BERMAN,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs AT&T SERVICES, INC. and DIRECTV, LLC (collectively, “AT&T”) bring this civil action against Defendant John Berman and hereby allege as follows:

**THE PARTIES**

1. Plaintiff AT&T Services, Inc. is a Delaware corporation with a principal place of business at 208 S. Akard St, Dallas, Texas 75202.

2. Plaintiff DIRECTV, LLC is a limited liability company organized and existing under the laws of the State of California, with a principal place of business at 2260 E. Imperial Highway, Fl. 10, El Segundo, California 90245-3501.

3. Upon information and belief, Defendant John Berman (“Berman”) is an individual and resides in the state of Washington with a residential mailing address at P.O. Box 831, Richland, Washington 99352. Berman may be served through personal service or by any other means available under Rule 4 of the Federal Rules of Civil Procedure.

**JURISDICTION AND VENUE**

4. This action arises under the United States patent laws, 35 U.S.C. §§ 101, et seq., and includes a request for declaratory relief under 28 U.S.C. §§ 2201 and 2202.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 2201, and 35 U.S.C. § 1, et seq.

6. Defendant Berman is subject to personal jurisdiction in this judicial district. Berman has filed a patent infringement action (Civil Action No. 3:16-cv-00382-N) against AT&T in this district and has asserted in that action the patents that are at issue in this declaratory judgment action. For at least these reasons, Berman has purposefully availed himself of the privilege of conducting business in this judicial district, especially with regard to the patents that are the subject of this action. This action arises out of and relates to Berman's actions in this judicial district, and it is therefore reasonable for the Court to exercise personal jurisdiction over Berman.

7. Venue is proper in this district under each of 28 U.S.C. §§ 1391(b) and 1400(b).

**EXISTENCE OF AN ACTUAL CONTROVERSY**

8. AT&T realleges and incorporates by reference each of Paragraphs 1-6 above.

9. An actual controversy exists within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

10. In Civil Action No. 3:16-cv-00382-N, Berman purports to be the owner of U.S. Patent No. 5,523,791, entitled "Method and Apparatus for Applying Overlay Images" ("the '791 patent"). The '791 patent bears an issuance date of June 4, 1996. A copy of the '791 patent is attached to this Complaint as Exhibit A.

11. In Civil Action No. 3:16-cv-00382-N, Berman purports to be the owner of U.S. Patent No. 5,610,665, entitled "Interactive Television Graphics Interface" ("the '665 patent"). The '665 patent bears an issuance date of March 11, 1997. A copy of the '665 patent is attached to this Complaint as Exhibit B.

12. In Civil Action No. 3:16-cv-00382-N, Berman has alleged that AT&T has “made, used, imported, offered for sale, and/or sold” “satellite receivers and digital video recorders” and “television receivers and digital video recorders” that infringe the ’791 patent and the ’665 patent.

13. In light of the allegations of infringement made by Berman in Civil Action No. 3:16-cv-00382-N, the circumstances demonstrate that there is a substantial controversy between AT&T and Berman with adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Therefore, an actual controversy within this Court’s jurisdiction exists under 28 U.S.C. § 2201.

### **COUNT I**

(Declaratory Judgment of Noninfringement of the ’791 Patent)

14. AT&T realleges and incorporates by reference each of Paragraphs 1-15 above.

15. AT&T has not directly infringed, contributorily infringed, or induced infringement of any enforceable claim of the ’791 patent, either literally or under the doctrine of equivalents.

16. AT&T is being damaged by Berman’s false accusations of infringement of the ’791 patent. Consequently, an actual and justiciable controversy exists between AT&T and Berman concerning AT&T’s noninfringement of the ’791 patent.

17. AT&T seeks a declaration pursuant to 28 U.S.C. § 2201 stating that AT&T has not infringed, directly or indirectly, any claim of the ’791 patent, either literally or under the doctrine of equivalents.

**COUNT II**

(Declaratory Judgment of Noninfringement of the '665 Patent)

18. AT&T realleges and incorporates by reference each of Paragraphs 1-19 above.

19. AT&T has not directly infringed, contributorily infringed, or induced infringement of any enforceable claim of the '665 patent, either literally or under the doctrine of equivalents.

20. AT&T is being damaged by Berman's false accusations of infringement of the '665 patent. Consequently, an actual and justiciable controversy exists between AT&T and Berman concerning AT&T's noninfringement of the '665 patent.

21. AT&T seeks a declaration pursuant to 28 U.S.C. § 2201 stating that AT&T has not infringed, directly or indirectly, any claim of the '665 patent, either literally or under the doctrine of equivalents.

**DEMAND FOR JURY**

22. AT&T requests a jury trial for this matter under Rule 38, Federal Rules of Civil Procedure.

**PRAYER FOR RELIEF**

WHEREFORE, AT&T respectfully prays that this Court:

A. Adjudge and declare that AT&T has not directly infringed, contributorily infringed, or induced infringement of any claim of the '791 patent or the '665 patent;

B. Find that this is an exceptional case and award AT&T its costs, expenses, and reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

C. Award to AT&T such other and further relief as this Court may deem just and proper.

Dated: April 22, 2016

Respectfully submitted,

/s/ Kurt Pankratz

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